

Minutes of the Board of Adjustment meeting held on Monday, August 10, 2009, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Wendell Coombs, Chair  
Joyce McStotts, Vice-Chair  
Rosi Haidenthaller  
Jonathan Russell  
Ray Christensen, Senior Planner  
Tim Tingey, Director of Community & Economic Development  
G.L. Critchfield  
Citizens

Excused: Connie Howard

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

#### APPROVAL OF MINUTES

Wendell Coombs asked for additions or corrections to the minutes of July 13, 2009. Rosi Haidenthaller made a motion to approve the minutes as written. Jonathan Russell seconded the motion.

Voice vote was taken. Minutes approved 4-0.

Mr. Coombs explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

#### CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

#### CASE #1386 – BRENT HILTON – 1400 East 5935 South – Project #09-54

Brent Hilton was the applicant present to represent this request. Ray Christensen reviewed the location and request for a side yard setback variance of 3 feet from the required 20 feet total required in the zoning regulations. Mr. Hilton is requesting a setback of 9 feet on the west side of his lot and 8 feet on the east side for a total of 17 feet in order to construct an attached garage. The property is located within the R-1-10 zone, which is single family residential. Municipal Code Ordinance 17.16.050 designates the Board of Adjustment as the appeal authority for Murray City and authorizes the Board to grant variances where the request meets the standards of approval.

Brent Hilton, 1400 East 5935 South, stated that he has measured every home on his street, and 70% of the homes have 16 feet total side yard setbacks. Mr. Hilton stated that he wonders if this problem developed when the area was annexed into Murray City from Salt Lake County. Mr. Hilton stated that the exact side yard setbacks on his property are 8'7 on one side and 7'7 on the other side, which is consistent with all of the other properties on his street.

Rosi Haidenthaller explained that these homes were built according to the code of Salt Lake County. It is probable that the developer obtained a permit that allowed 16 feet for side yard setbacks. Once a property is annexed into Murray City and there are changes to the structure, it must comply with Murray City regulations or a variance must be granted. Mr. Hilton stated that if he had known about this when the annexation occurred he would have opposed it as he thinks it is unfair. Mr. Hilton stated that the City has imposed a hardship on him by imposing this requirement.

Jonathan Russell stated that when someone makes a change to their home, they must meet the current code. When an exception is made and no hardship has been established, that results in a precedence being set for future cases. Mr. Hilton stated that the newer homes being built in his subdivision have larger lots, so they aren't having this same problem. Mr. Russell stated that lots are actually much smaller than they used to be, and asked Mr. Hilton about the size of his lot. Mr. Hilton is not sure of the actual square footage. Mr. Coombs stated that the lot is approximately 10,000 square feet.

Mr. Coombs asked about the possibility of having a detached garage behind the house, where there is more space. Mr. Hilton responded that the reason he wants the garage attached is because he has a handicapped granddaughter that resides there and it is difficult to push her through the snow. Mr. Hilton owns the home but doesn't reside there, it is his daughter's residence. Mr. Russell stated that when a variance is granted it stays with the property, so if Mr. Hilton's daughter moves, the variance would still be in place.

Mr. Hilton stated that there is currently a small attached carport. Mr. Coombs asked about the size of the proposed garage. Mr. Russell stated the proposal is for a garage that has an interior dimension of 16 feet, which is the minimum space for van accessible parking and an aisle for unloading a disabled person. Mr. Russell stated that 14 feet is spacious for a single vehicle. Mr. Hilton stated that there is additional space needed lengthwise as well.

Ms. Haidenthaller stated that there are some special circumstances that are general to the neighborhood and are pre-existing, specifically the 16 foot side yards. Mr. Russell stated that most of those homes have two car garages.

Lynn Westberg lives directly behind this property. He stated that there is a walkway from Cottonwood High School that used to be open and led to Mr. Hilton's street. There are still kids that use the walkway and jump over Mr. Westberg's fence. Mr. Westberg asked what is being done with the walkway, and if it is part of Mr. Hilton's property. Mr. Hilton responded that it is part of his property and that a public hearing was held previously regarding this issue. Mr. Russell asked how the walkway is involved in the variance request. Mr. Westberg stated that he isn't sure where the property line is. He clarified that the walkway dead-ends at the back of Mr. Hilton's property. Mr. Hilton stated he wants to get rid of the walkway. Ray Christensen explained that the matter went before the Planning Commission for an amendment to the subdivision in order to eliminate the walkway. The walkway area is included in the measurements that Mr. Hilton has provided.

Mr. Russell asked about the width of the garage. Mr. Hilton replied that it will be 21.5 feet because the fireplace protrudes into the space. Mr. Russell asked if Mr. Hilton had considered building the garage 18.5 feet, and Mr. Hilton responded that it would be too small to function as a two car garage. Mr. Russell stated that this is a difficult case to determine because so many of Mr. Hilton's neighbors have two car garages, and the Board attempts to allow people to have full use of their property. Ms. Haidenthaller agreed that other variances have been granted in similar situations, but stated that each property is unique.

Mr. Russell made a motion to grant the variance based on the fact that most people in this specific area are benefiting from having a two car garage, which results in a hardship being imposed on Mr. Hilton if he is not allowed to do the same. Mr. Russell stated that granting this variance would not impose any difficulties on other surrounding properties. Seconded by Ms. Haidenthaller.

Call vote recorded by Ray Christensen.

N Ms. McStotts

A Mr. Coombs

A Ms. Haidenthaller

A Mr. Russell

Motion passed, 3-1.

Ms. Haidenthaller made a motion to have the Findings of Fact rewritten, stating that there are special circumstances attached to this property because literal enforcement of the code would cause a hardship for Mr. Hilton. Ms. Haidenthaller stated that the entire neighborhood was developed with smaller side yards because they were originally in Salt Lake County. Seconded by Mr. Russell.

Call vote recorded by Ray Christensen.

A Ms. McStotts

A Mr. Coombs

A Ms. Haidenthaller

A Mr. Russell

Motion passed, 4-0.

CASE #1387 – WILLIAM SMITH – 1257 East Hyland Lake Drive – Project #09-60

Richard Cowley was the applicant present to represent this request. Ray Christensen reviewed the location and request for a side yard setback variance of 3 feet from the required 20 feet total required in the zoning regulations. This subdivision was annexed into Murray City from the County, but was originally developed with large side yards. The property is located within the R-1-8 zone. Murray City Code Section 17.100.080 states that a residential building lot in this zone district shall meet the following minimum yard requirements: B. Side Yard: The minimum depth of one of the side yards of a residential dwelling is 8 feet. The zoning regulations require the total of both side yards

to be 20 feet. The applicant is requesting a 3 foot variance for construction of a carport addition within 5 feet of the side yard boundary. The property is similar in size and shape to other properties in the area. There is currently a double carport at the front of the property, and Mr. Smith would like to add another carport to the east in order to accommodate his motor home. The carport will be 25 feet deep and 12 feet wide. There is currently a detached garage near the back of the carport area. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance.

Richard Cowley, 13747 South Yearland Drive, Riverton, is the son-in-law of William Smith and is representing him tonight. Mr. Cowley stated that this variance request is similar to the request from Mr. Hilton. Mr. Cowley stated that other neighbors in the area have similar carports on their property. A home on the corner has a garage that abuts the property line. Ms. Haidenthaller stated that the home on the corner was affected by the widening of 1300 East, which took approximately 10 feet of their east side yard. That home has an unusual circumstance which does not apply to Mr. Smith's property. Mr. Cowley stated that a new subdivision is being built down the street, and there are 14 feet total between the homes. Mr. Christensen explained that the subdivision is actually a Planned Unit Development, which has different requirements. Mr. Coombs clarified that the smaller setbacks were authorized when the PUD subdivision obtained development approval. Those rules don't apply to Mr. Smith's property.

Mr. Cowley stated that Mr. Smith does have a hardship due to the sun fading his motor home, and other neighbors in the area have similar setbacks to what is being proposed. Mr. Cowley stated that the 20 foot total would be met. The motor home is too tall to fit under the existing carport or the garage, and Mr. Cowley stated that the carport will be constructed by a professional awning company, so it would not detract from the value of the homes in the area. Ms. Haidenthaller stated that a carport is considered a solid structure and that placing it only 3 or 5 feet from the property line is too close. There would not be a sufficient barrier between Mr. Smith and the adjacent property. Mr. Cowley stated that the distance between the homes is 25 feet. Ms. Haidenthaller stated that the Board has to make its determination based on the property lines, not the distance between the homes.

Ms. McStott asked how the back garage would be accessed if a carport was built. Mr. Cowley responded that it would be entered through the carport.

Mr. Russell asked if the carport size could be adjusted. Mr. Cowley responded that it has to be 12 feet wide in order to accommodate the motor home. Mr. Coombs stated that another option would be to remove a portion of the existing carport, and stated that he cannot identify a hardship associated with this request. Mr. Smith already has a two car garage and a two car carport. Mr. Coombs agrees that it would be nice to cover the motor home, but there isn't anything unique about the property that would indicate a variance is appropriate. Ms. Haidenthaller agreed with Mr. Coombs, and stated that the hardship is self imposed by Mr. Smith choosing to have a motor home. Mr. Russell asked the width of the motor home. Mr. Cowley responded that it is 8-1/2 feet. Mr. Cowley asked if a variance would be necessary if they were able to maintain an 8 foot side yard. He was told that in that case, a variance is not necessary.

Ms. McStotts made a motion to deny the variance based on lack of evidence that the property meets the necessary criteria and based upon staff's findings. Seconded by Ms. Haidenthaller.

Call vote recorded by Ray Christensen.

A Ms. McStotts

A Mr. Coombs

A Ms. Haidenthaller

A Mr. Russell

Motion passed, 4-0.

Ms. Mcstotts made a motion to accept the Findings of Fact as written for Case #1387, William Smith. Seconded by Jonathan Russell.

Call vote recorded by Ray Christensen.

A Ms. McStotts

A Mr. Coombs

A Ms. Haidenthaller

A Mr. Russell

Motion passed, 4-0.

Mr. Cowley asked when the law was put into effect, and if there is a grandfather clause related to the 20 foot variance. Mr. Russell stated he thought it was around 1978. Ms. Haidenthaller explained that after the annexation the City went through a process of trying to make all of the residential areas the same in order to avoid having different patches of zoning. There were public hearings related to this process, and the agricultural aspect of the zoning was allowed as non-conforming. If someone had horses, they could keep them as long as the use was uninterrupted. Mr. Cowley referred to Code Section 17.170, which pertains to prior created lots. Tim Tingey responded that lots or buildings that were annexed into Murray City could maintain their legal non-conforming setbacks that existed at the time of annexation. Once a modification or change is proposed for a property, the current zoning ordinances must be met.

#### OTHER BUSINESS

There was no other business.

Meeting adjourned.

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Ray Christensen, AICP  
Senior Planner